REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NOS. 709-10 OF 2006**

% **Date of Decision** : 10th July, 2007.

SHRI TARSEM KUMAR GARG & ANR. .... Appellants.
Through Mr. Vikas Mahajan, Advocate.

VERSUS

DELHI DEVELOPMENT AUTHORITY .... Respondent.
Through Mr. Rajiv Bansal, Advocates

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The present Letters Patent Appeals impugn judgment dated 24th March, 2006 passed in Writ Petition (Civil) No. 1613/1998 titled

Tarsem Kumar Garg and another versus Delhi Development Authority and others. Learned Single Judge has held that the appellant does not have any right to permanent allotment of the kiosks which were allotted to the appellants on licence basis for a period of 11 months in 1988/89.

2. Learned counsel for the appellants questioned the impugned judgment on the basis of the Order dated 23rd September, 2003 passed by the permanent Lok Adalat, Delhi Development Authority.

3. The appellant no.1 pursuant to tenders floated by the respondent-Delhi Development Authority (hereinafter referred to as the DDA, for short) being the highest tenderer was allotted kiosk no.7 at DDA Complex, Vikas Sadan on monthly licence fee of Rs.3,502/-. Similarly, another kiosk was allotted to appellant no.2 on the basis of tender submitted by him on a monthly licence fee of Rs. 5250.70. The first appellant took possession of the kiosk on 16th November, 1988 and the respondent no.2 took possession of the kiosk allotted to him on 8th May, 1989.

4. Notice inviting tenders specifically stated that the kiosks would be allotted on licence basis for a fixed period of 11 months only.

Therefore, the persons tendering and giving bids for allotment of kiosks were aware that the allotment was for a limited time of 11 months and was not on a permanent allotment or allotment on ownership basis. The appellants had also made their offer and given their bids keeping in view the limited period for which the licence was issued and the right was granted. In these circumstances, we do not think the appellants have any right to ask for extension of the licence period which had expired in 1989 and 1990 respectively. In fact the appellants have over-stayed and continued to use and occupy the kiosks for the last 17 years, much beyond the period of their licence. In writ proceedings, it will not be just and fair to modify and alter the terms and conditions of allotment on the basis of which the appellants had submitted their tenders in 1988-89, after the licence period. Had it been known to others that the licence period can be extended, they may have agreed to pay a higher fee. To allow the appellants to continue in the kiosks will be unjust and unfair to others who may be interested in giving their bids for the kiosks and seek to carry on

business from the kiosks. In fact to permit and allow the appellants to become permanent allottees or to continue in the kiosks any further will amount to violation of Article 14 of the Constitution of India as it will amount to discrimination and denying of rights of other persons who may be interested in giving their bids and carrying on business from the kiosks. Rights of other persons cannot be ignored in the favour of appellants.

5. We entirely agree with the reasoning given by the learned Single Judge who has examined the Public Law Doctrine and has referred several decisions of the Supreme Court with reference to Circular dated 19th February, 1992 issued by the Government of India for ensuring proper implementation of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. Learned Single Judge has held that the Circular has to be read and understood in the larger context in which it was issued and cannot be applied to cases where allotment is made on licence fee basis for a limited period with a clear understanding that after expiry of the licence period fresh allotment after inviting bids shall be made. Learned

Single Judge has extensively quoted from the judgment of this Court in ***C.J. International Hotels Limited versus N.D.M.C.*** reported in (2003) 3 AD (Delhi) 733 wherein reference to earlier judgments of the Supreme Court in the case of ***Barelly Development Authority versus Ajay Pal Singh*** reported in (1989) 2 SCC 116, ***Vriganto Naveen versus Government of Andhra Pradesh & others*** reported in AIR 2001 SC 3609 and several other cases was made. The finding and observations of the learned Single Judge are apt and we find no reason to interfere and hold to the contrary.

6. As pointed out by the learned Single Judge, the Order dated 28th September, 2003, of the Lok Adalat, as is apparent from the last paragraph of the Order itself, was merely recommendatory in nature. No adjudication of rights had taken place and DDA never consented or agreed to the said Order. The recommendation made by the Presiding Officer, Lok Adalat was not accepted by the DDA. In fact, the stand taken by the DDA is that on 22nd August, 1995 kiosk no.4, Vikas Sadan, was auctioned for a period of 11

months on a monthly licence fee of Rs.52,500/-. However, it is the case of the appellants that the said allottee could not generate enough income and therefore vacated the kiosk. It is open to the appellants to give their bids in the tenders/auctions for allotment of kiosks. They must compete with others and cannot be given any previlege and shown indulgence. The appellants have to be treated at par and on equal footing as others. No discrimination can be permitted. However, the appellants have stated that several kiosks in Vikas Sadan are lying vacant and have not been put to auction/bidding by the DDA. Thus, it is submitted, the Respondent has created artificial scarcity and also deprived public from participating and giving their bids. Learned counsel for the appellants have submitted that the appellants have apprehension that even after taking possession of the kiosks they will not be put to auction/bidding for a long period and the allottees of the kiosks will enjoy monopoly and charge exorbitant fee from the general public for providing services required by them. There is no such allegation in the Appeal and we hope and trust that the

respondent-DDA will not like the common man who visits the DDA Office at Vikas Sadan, to be exploited. We are sure that DDA will keep in mind that the allotment of kiosks at Vikas Sadan ensures that basic services and facilities are made available to the general public who visit the DDA office. In case the kiosks are not put to auction/tender and allotted, situation of artificial scarcity may be created leading to exploitation of the general public. This also causes loss of revenue to the respondent-DDA and encourages unauthorized encroachment on government land.

7. In view of the above, we do not find any merit in the present Appeals and the same are accordingly dismissed. In the facts and circumstances of the cases, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

JULY 10, 2007
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